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August 17, 2021

Via ECF

Hon. Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 14D
New York, New York 10007-1312

The Court rules as follows: (i) Defendants' motion for sanctions against pro se Third-Party Defendant Fernandez is denied; (ii) deposition of Third-party Defendant Fernandez may be rescheduled until he has retained counsel, but in no event later than September 3, 2021; (iii) depositions noticed for August 20, 2021, shall be conducted remotely in light of the on-going Covid-19 pandemic.

SO ORDERED.

/s/ Hon. Alvin K. Hellerstein
August 17, 2021

Re: *Pizarro v. Euros El Tina Restaurant Lounge and Billiards, et al.*,
Case No. 20 Civ. 5783 (AKH)

**PARTIES SEEK IMMEDIATE CLARIFICATION OF ORDER DATED
AUGUST 3, 2021 [DKT NO. 96]**

Dear Judge Hellerstein,

I am counsel for Defendants/Counterclaim/Crossclaim Plaintiffs Euros El Tina Restaurant and Billiards Corp., Santiago Quezada, and Santiago Quezada Jr. (hereinafter "Defendants"). We write to request: 1) attorneys' fees and costs against third-party defendant Emiton Fernandez for failing to appear at today's deposition, 2) permission to reschedule deposition of Mr. Fernandez until such time as he has retained counsel, and 3) clarification of the Court's Order of August 3, 2021, [Dkt. No. 96] given Ms. Pizarro and Mr. Castro's expressed intention not to appear for their noticed depositions later this week.

As the Court is aware, on July 30, 2021, the Defendants filed a letter motion seeking a brief extension of the discovery deadline in order to complete discovery and finish the depositions of Plaintiff and the third-party defendants. [Dkt. No. 95]. By Court Order dated August 3, 2021, the Court denied Defendants' request to extend discovery but did order the Plaintiff and third-party defendants Eladio Castro and Emiton Fernandez to make themselves available for depositions on one of three days in August (August 16, 18, and 20).

As per the Court's instruction, and per an accommodation requested by Mr. Castro's counsel, on August 10, 2021, Defendants sent deposition notices to the parties. Exhibit 1. The deposition notices indicated that Mr. Fernandez's deposition would be taken on August 16 from 10:00 AM to 2:00 PM, Ms. Pizarro's on August 18, from 10:00 AM to 2:00 PM, and Mr. Castro's on August 20 from 10:00 AM to 2:00 PM. *Id.* All of the depositions were noticed to be in person and scheduled to be videotaped. *Id.*

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Mr. Fernandez

In order to ease the burden on Mr. Fernandez, given that he is pro-se, last week Defendants sent the parties a notice that Mr. Fernandez's deposition would be conducted remotely, and thereafter attached the appropriate virtual link. Exhibit 2. In addition, Defendants' office called, emailed and texted Mr. Fernandez to inform him of this change.

This morning, at 10:00 AM Defendants' counsel joined the session to find that he was the only party on the line. The reporter, videographer, the interpreter and yours truly, waited until 10:40 AM but Mr. Fernandez did not show up. Interestingly enough, neither did counsel for Ms. Pizarro or Mr. Castro.

Later in the day, at 2:42 PM Mr. Fernandez sent the attached email informing Defendants' counsel that he did not show up because he did not have an attorney and is in the process of trying to obtain one for free. Exhibit 3. With all due respect to Mr. Fernandez, he should have informed Defendants' counsel of this issue prior to wasting Defendants' time and money. Since it is evident that Mr. Fernandez did inform Plaintiff and the other third-party defendant, whose counsel also failed to appear for the deposition, we believe this oversight to have been committed on purpose.

Thus, we ask the Court to sanction Mr. Fernandez by ordering him to cover Defendants' fees and costs for this wasted time. In addition, we seek permission to conduct Mr. Fernandez's deposition within the next 2 weeks with or without counsel.

Plaintiff and Third-Party Defendant Castro

After receiving the notices of deposition, which demanded the parties appear for an oral examination in person and to be videotaped, counsel for the Plaintiff and for Third Party Defendant Eladio Castro have indicated that they will not present their clients to be deposed in such a manner. Indeed, notwithstanding the Court's order with respect to the depositions taking place on three different days, Plaintiff's counsel demands that his client be deposed on Friday, August 20, 2021, at the completion of Mr. Castro's deposition.

To be clear, given all of the discrepancies that have occurred with respect to discovery and the depositions in this case, Defendants are of the belief that in person videotaped depositions are the best way to curtail any untoward behavior. Moreover, Defendants don't interpret the Court's August 3, 2021, Order as a limitation on the ability to conduct depositions in this way.

Thus, Defendants respectfully request that they Court make it clear that the depositions, as currently noticed – in person and to be video recorded – may proceed.

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Plaintiff and the Third-Party Defendants' Position

An email with a copy of this letter was sent to all parties in this action yesterday afternoon **asking them to submit their positions, if any, by today at 10:00 am.** Exhibit 4. Last night Plaintiff's counsel sent an email informing that he could not respond until tonight. Exhibit 5. Earlier this morning plaintiff's counsel requested copies of the exhibits to be submitted with this letter, but **at the time of filing no parties provided any comments with respect to this letter and no other party has asked for additional time to respond.**

GIVEN THAT THE DEPOSITION OF THE PLAINTIFF IS NOTICED FOR TOMORROW AT 10:00 AM, THE PARTIES SEEK IMMEDIATE RELIEF FROM THE COURT.

Very truly yours,



Martin E. Restituyo

cc. All Parties (Via ECF)